

ADVISORY COMMITTEE MINUTES

August 23, 2005

Members Present:

Jack Barrett	Steve Millard
Bob Shosted	Linda Sams
John Greenfield	Dave Whaley
Keith Hutchinson	Senator John Andreason
Dave Gribskov	Rian Van Leuven
Max Sheils	
Representative Kathie Garrett	

Members Absent:

Tracy Whigham
John Tippets
Willis Norton

Minutes:

Chairman Greenfield moved to approve the Minutes of May 24, 2005. It was seconded and the motion carried.

Proposed Legislation:

§72-204 and §72-212 Pecuniary Gain

(Max Sheils, Chair, Jack Barrett, John Greenfield, Blair Jaynes [IC Staff])

Max Sheils reported that the Legislation Review Subcommittee met with Christi Simon, Compliance Bureau Chief, to review the proposed elimination of "pecuniary gain" from §72-204 and §72-212 Idaho Code. Mr. Sheils stated that similar legislation was submitted last year and passed the House unanimously, but the Advisory Committee had reservations regarding the affect it may have on homeowners, so the Commission withdrew the bill.

Mr. Sheils reported that the subcommittee reached consensus that the purpose of the legislation was appropriate and should go forth.

Blair Jaynes, Deputy Attorney General for the Commission, discussed elimination of the "Not for Pecuniary Gain" exemption from the Worker's Compensation Law and how Idaho is the only state that has retained this broad exemption in its workers' compensation law. Mr. Jaynes reported that the Idaho Supreme Court in *State v. Bible Missionary Church, Inc.*, broadened the definition of "pecuniary gain" in a way that extends this exemption to all businesses with employees that do not engage in commercial transactions where money is received in direct payment for the goods or services provided to the public. This new court interpretation will result in many more Idaho workers being without workers' compensation coverage. Elimination of this exemption will ensure that these Idaho workers and their families will continue to be protected by the Workers' Compensation Law. It will also reinforce the continuing requirement that all covered private employment must still be

conducted in the service of the normal trade, business, profession or occupation of the employer.

Christi Simon spoke to the Committee on the problems and confusion resulting from the Kuna Bible case. The majority of inquiries are from faith-based organizations wanting to know how this case affects their organization. A wide variety of businesses that receive grants and donations don't believe they are carrying on business for pecuniary gain and therefore are exempt. Revising this legislation would clarify the requirements for these organizations.

Committee Recommendation on 72-204 & 72-212 Draft Legislation:

Chairman Greenfield asked for consensus of the Advisory Committee to recommend approval of the proposed legislation to the Industrial Commission. Consensus was reached.

Follow-up:

Closing Claims Without Impairment Benefits – Scott McDougall, Benefits Administration Manager:

Scott McDougall reported that at the last Advisory Committee meeting Jack Barrett brought up an issue that was presented to him by Todd Winslow with Associated Loggers in North Idaho. Mr. Winslow was concerned that the Commission was closing claims without impairment ratings being properly assessed and paid by the insurance company. Mr. McDougall spoke with Mr. Winslow and discussed the Commission's procedures on tracking impending impairment ratings. He reported that the Commission audits every claim filed with the Commission and every summary of payment notice filed by the surety. Depending on the type of injury, claims administratively closed without impairment ratings are flagged for future audit to insure eligible claimants receive impairment benefits. Mr. Winslow was unaware of the Commission's procedure on closing claims, and is now satisfied that it is not an issue.

Subcommittee Reports:

Balance Billing by Providers

(Max Sheils, Chair, Jack Barrett, John Greenfield, Dave Whaley, Steve Millard, and Dave Gribskov)

Mr. Sheils reported that the subcommittee met with Scott McDougall to discuss resolving the problem of providers balance billing injured workers. The subcommittee discussed proposing legislative changes to Idaho Code 72-432.6, that in effect states an injured worker shall not be responsible for charges of physicians, hospitals or other providers of medical services to whom he has been referred. Mr. Sheils stated that there is nothing in statute or regulations that prohibits a medical provider from balance billing. Mr. Sheils suggested adding language to 72-432 to make clear medical providers cannot balance bill an injured worker. Discussion was held regarding penalties for providers who continue to balance bill. Representative Kathie Garrett stated that giving power to a state agency to impose penalties

is very difficult to get passed. Steve Millard suggested the bill be submitted in two stages if there was a decision in favor of penalties. The first stage would be to clarify that injured workers do not have to pay for medical bills on an accepted claim. The second stage would be to draft appropriate penalties for providers who continue to balance bill.

Mr. Sheils indicated that the subcommittee would meet and prepare a draft to send to Advisory Committee members well before the next meeting. Senator Andreason and Representative Garrett both indicated their willingness to sponsor the legislation.

Other Issues:

Industrial Commission Report

Commissioner Limbaugh reported that the Commission is working on the medical fee rule (IDAPA 17.02.08), and is close to establishing conversion factors for CPT codes. The Commissioner stated that surgical codes have been defined in six different groupings, which is more than the statute required. The Commission tentatively plans to conduct public hearings for comments and testimony in Lewiston, Coeur d' Alene, Pocatello, and Twin Falls. Due to the time constraints of §72-803, the Commission has drafted a simple rule to comply with the legislation, but has not addressed utilization, pharmaceuticals or hospitals at this time. Dave Gribskov requested copies of the data provided the Commission by Idaho Medical Providers.

Commission Director Mindy Montgomery reported that a Request For Purchase is being drafted for the Industrial Commission to relocate the Boise office.

Ms. Montgomery noted that the Commission has only three referees at this time since the recent retirement of Referee Bob Barclay. Referee Lora Rainey-Breen may be returning to the Commission sometime in January and recruitment for Mr. Barclay's position is scheduled for replacement by the end of September. The Commission has not experienced a backlog of cases at this time.

The Director invited the Advisory Committee members to attend the Industrial Commission's Annual Workers' Compensation Seminar being held October 27, 2005, at the Boise Centre on the Grove.

Consideration of Issues:

Kids Chance Program – Jack Barrett

Jack Barrett discussed the Kid's Chance Program, a non-profit corporation that originated in Georgia and has rapidly spread throughout the U.S. The program identifies dependents or children of deceased workers and provides scholarship money to those who qualify. Money is raised in a variety of ways and in other states the workers' compensation section of the state bar association has operated the Kids Chance Program. Mr. Barrett indicated Moffatt Thomas would provide the paperwork on a pro bono basis to establish this organization. Mr.

Barrett would like a subcommittee formed to pursue the possibility of establishing the Kids Chance Program in Idaho.

Death Benefits and Total Permanent Disability Schedules – Jack Barrett

Mr. Barrett reported that compared to other states, Idaho's death and total disability benefits for workers' compensation are among the lowest in the nation even with states that have comparable average state wages. Twenty-four states have comparable average state wages, but Idaho's benefits are much lower. Idaho only allows benefits until the age of 18 without additional benefits for advanced training of dependents, while other states allow for extended benefits to dependent children attending college. Jack would like a subcommittee formed to review both the death and total permanent disability benefits and the Kid's Chance Program. Mr. Barrett volunteered to serve as an ex-officio member on the committee. Bob Shosted, Linda Sams, Rian VanLeuven, Senator Andreason, John Greenfield, Dave Gribskov, and Kim Takagi with the Commission's Benefits Administration will serve on the subcommittee. The members agreed that Jack Barrett should chair the subcommittee.

Committee Membership Elections

Chairman John Greenfield reviewed the nominees for members whose term on the Advisory Committee had expired. Names of individuals recommended for membership by various groups around the state were placed on the ballot including current members who volunteered to serve another term.

The final ballot included the following nominations:

1 Representative of Workers (3 Years)

Rian VanLeuven, PACE #608, Lewiston
Judy Luna, Nampa

1 Representative of Employers (3 Years)

Bob Shosted, J.R. Simplot, Boise
Tony Ventresco, Potlatch Corp., Lewiston

1 Representative of the Insurance Industry (1 Year)

Dave Gribskov, Liberty NW, Boise
Todd Winslow, Associated Loggers Exchange, Coeur d'Alene
Steve Haase, Industrial Claims Management, Boise

1 Representative of the Insurance Industry (3 Years)

Steve Haase, Industrial Claims Management, Boise
Todd Winslow, Associated Loggers Exchange, Coeur d'Alene

1 Attorney Primarily Representing Claimants (3 Years)

James Arnold, Petersen, Parkinson & Arnold, Idaho Falls
Starr Kelso, Starr Kelso Law Office, Coeur d'alene

1 Attorney Primarily Representing Employers (3 Years)

Glenna Christensen, Moffatt Thomas, Boise
Neil McFeeley, Eberle, Berlin, Kading, et al, Boise

Chairman

Bob Shosted, J.R. Simplot Company, Boise

Additional space was provided for write-in candidates in each category. However, no write-in nominations were made.

After the vote, the ballots were counted. The following individuals were elected:

1 Representative of Workers (3 Years) - Rian VanLeuven

1 Representative of Employers (3 Years) - Bob Shosted

1 Representative of the Insurance Industry (1 Year) - Dave Gribskov

1 Representative of the Insurance Industry (3 Years) - Steve Haase

1 Attorney Primarily Representing Claimants (3 Years) - James Arnold

1 Attorney Primarily Representing Employers (3 Years) - Glenna Christensen

Chairman - Bob Shosted

The next meeting of the Advisory Committee was scheduled for November 15, 2005.

Chairman Greenfield thanked the members of the Advisory Committee and welcomed newly elected members James Arnold and Glenna Christensen who were present. Mr. Greenfield also thanked Jack Barrett for his invaluable knowledge and service and Keith Hutchinson for his hard work and service on the Advisory Committee.

The Advisory Committee and Commission thanked John for serving as Chairman of the Advisory Committee.

Rian Van Leuven commented on the great job that the Industrial Commission's Rehabilitation office in North Idaho is doing conducting job site visits and working with physicians and injured employees in an effort to help get people back to work. He stated that he appreciates their help.

Topics for Next Meeting:

Balance Billing Legislation
Kid's Chance Program
Subcommittee Membership
Death and Disability Benefits